

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL

-----X
PHILIP DOMINGUEZ

PLAINTIFF,

COMPLAINT

AMON. CH.J.

- Against -

CV 12 -

231

WILLIAM R. MILLER

LONG ISLAND RAILROAD COMPANY

M.D. CHIRILLO

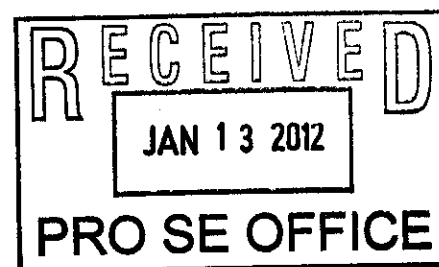
D.J. HORRELL

MICHAEL BARTO

RICHARD KRASON

GEORGE FARRELL

BLOOM, M.J.
Jury Trial Demanded



DEFENDANTS.

-----X
I. Parties:

Plaintiff Philip Dominguez resides at 901 Avenue H, Brooklyn NY 11230.

Defendant William R. Miller resides at 224 Onyx Dr, Hedgesville, WV 25427

Defendant Long Island Railroad Co. is headquartered at Jamaica Station, Jamaica NY on the corner of Stuphin Blvd. and Archer Avenue.

Defendant M.J. Chirillo is employed at the Long Island Railroad Company Headquarters, Jamaica Station, Jamaica, NY

Defendant D.J. Horrell is employed at TCU headquarters: 3 Research Place, Rockville, Maryland 20850

Defendant Michael Barto is employed at the Long Island Railroad Company, Headquarters, Jamaica Station, Jamaica NY

Defendant Richard Krason is employed at New Jersey Transit, Rail Operations Center, 1148 Newark Turnpike Kearny, NJ 07032

Defendant George Farrell is employed at the Long Island Railroad - Penn Station Control Center, 400 West 31st Street, Manhattan, NY 1001

II. The jurisdiction of the court is invoked pursuant to the Railway Labor Act and the Constitution of the United States.

III. Statement of Claim.

1. I am the charging party and submit this affidavit, on behalf of myself in relation to National Mediation Board Public Law Board No. 6988 Case No. 12.

2. I worked as a paid employee for the Long Island Railroad Company (LIRR herein) from July 25th, 2007 through May 1st, 2009. I engaged in a pre-employment unpaid apprenticeship held by the LIRR immediately prior to being made a paid employee of the LIRR.

3. I engaged in a vigorous pre-employment hiring process that included, but was not limited to, a panel interview as well as multiple performance, aptitude, knowledge and comprehension examinations, medical evaluation, drug & alcohol screening, and a physical dexterity screening.

4. The majority of selected candidates are unable to successfully complete the above listed process.

5. Of all the Block Operators hired in 2007, I had the most extensive and varied railroad & transit work experience.

6. During my first year of probationary employment with the LIRR, I received satisfactory performance reviews for every quarter, and ultimately completed my probationary period successfully.

7. In or around January 2009, Supervisor of Train Movement Michael Barto commenced an investigation into the alleged falsification of my employment application. Upon information and belief, Mr. Barto initiated this investigation on his own initiative after having been informed during a casual conversation with an employee from New Jersey Transit (NJT) that I had been fired from a previous job NJT. Mr. Barto broke both

LIRR operating rules and LIRR corporate policy by engaging in and continuing a dialogue with NJT. Mr. Barto, not being a person trained in the proper performance of background investigations made numerous errors in his tactics. He and later others relied on testimony as fact made by a Mr. Krason who had reason and motive to be dishonest and misrepresent the claimants previous experience at NJT. Previously Mr. Krason was the subject of a complaint filed by the claimant.

8. The circumstances surrounding Mr. Barto's investigation suggest that the decision had already been made to terminate my employment and the LIRR was simply looking for a reason to justify my termination. As an initial matter, there was no reason for Mr. Barto or anyone else to be reviewing my personnel records. Moreover, the information on which Mr. Barto based his decision was false: I was not fired from my job with NJT as incorrectly stated by Mr. Krason. Rather, I was briefly disqualified from NJT's Train Dispatcher program in 2004. After filing a discrimination complaint with the agency's internal Equal Employment Opportunity office, I was reinstated to my prior position with full back pay and a clean record. I voluntarily resigned my position with NJT in September 2004, as I correctly reported on my LIRR employment application.

9. That I had resigned and was not fired was confirmed, in writing, by NJT in a letter sent to Mr. Barto in March 2009. Nonetheless, even after the LIRR learned that the information upon which Mr. Barto had based his decision to investigate me was false, LIRR nonetheless continued to pursue its investigation in order to come up with new accusations to make against me. Mr. Barto made additional inquiries as to my NJT job title and the identity of my supervisor. Based on information received in response to his inquiries, I was then formally charged with providing a false title and reference on my LIRR employment application.

10. On my LIRR job application, I stated that my job title was "Train Dispatcher", and that my supervisor was Christopher Scull. Neither statement was false. I was hired by NJT as a Train Dispatcher (in training), and my failure to specify that I was a trainee was not a misrepresentation but merely a non-material omission. Christopher Scull, Assistant Chief Train Dispatcher, did indeed directly supervise me while I was employed my NJT. The individual that LIRR later claimed I should have listed as my supervisor, Richard Krason was a much higher-level employee with whom I had very little direct contact. My decision to list Mr. Scull rather than Mr. Krason was based on my belief that Mr. Scull was more

11. Moreover, neither of the alleged inaccurate statements had any bearing whatsoever on my qualifications for or ability to perform the job of Block Operator for the LIRR. In fact, after leaving NJT, I had been employed by Amtrak for more than three years as a Block Operator and Train Director with a perfect safety/operating rules adherence record. Even if, *arguendo*, the alleged inaccuracies regarding my prior employment with NJT had been true, they were trivial at best and did not merit terminating my employment.

12. The use of the word trainee tends to be an informal term, even at the Long Island Railroad. New-hire Block Operators are hired under the title "Block Operator", not "Block Operator Trainee". New operators may be referred to as "trainees", however they are referred to in LIRR documents as "Block Operators". It is hypocritical for the LIRR on one hand to refer to its new hire "Block Operators" as such, but then charge me for not using the word "trainee" in my previous job title at NJT. NJT is a similar railroad operation with identical or very similar job titles, duties, and functions.

13. The LIRR arranged for a "trial" of the charges against me, on March 24th, 2009, with Mr. Barto serving as prosecutor. The hearing officer was Ms. M. Kustoff, a LIRR employee. Ms. Kustoff was not the ordinary trial officer, as the regular trial officer for transportation department matters recused himself from the trial, for reasons unknown to me. Additionally, I tried to engage the trial office and LIRR management in attempting to come up with a solution to verifying my title, status, and supervisors at NJT. I was rebuked.

14. Ms. Kustoff prevented the answering of questions I felt were relevant to the case. In addition the Long Island Railroad trial office refused to request information from NJT or others which may have aided my case. The decision was a forgone conclusion: I was found guilty.

15. While the trial was held on March 24th, 2009, the decision was rendered over a month later and immediately at the start of my scheduled vacation. On May 1st, 2009, I was dismissed from the Long Island Railroad, by a method in violation of LIRR corporate policy. A letter of dismissal as well as a copy of the trial results were sent to my address. The sentence was signed and dated by Mr. George Farrell, indicating it was his decision to dismiss me. Mr. Farrell violated LIRR corporate policies "Employee Status Changes",

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"Corporate Procedure on General Employment" amongst others. Despite railroad policy and contract, I was never paid for the vacation that I was assigned and earned.

16. I appealed the results and eventually was granted a meeting with Mr. M.D. Chirillo, and a union representative from the Transportations Communications Union (TCU) and explained to them that I was unable to obtain documents from my personnel file at NJT without a subpoena or legal case. I explained to Mr. Chirillo said he understood my position and would run it by the LIRR managers to see if they would consider it. They denied my internal appeal.

17. Subsequent to being dismissed by the Long Island Railroad I filed a lawsuit against NJT. Through the discovery process and through the interviewing of witnesses, documents, and plaintiffs via subpoena and deposition large amounts of information substantiating my claim were uncovered and documented.

18. On June 21st, 2011 Public Law Board No. 6988 (board) convened to discuss and hear testimony in connection with case No. 12. In attendance were the defendants Mr. Miller, Ms. Horrell, Mr. Chirillo, and unknown to me Long Island Railroad officials. I also attended along with Mr. James Figueroa, Mr. William DeCarlo and intermittent attendance by Mr. Arthur Maretea of the Transportation Communications Union (TCU).

19. At the aforementioned hearing, I presented the board evidence obtained during the discovery process with NJT that was unavailable at the time of the company trial. This evidence directly contradicts the LIRR's claim that I lied on my employment application. Included in this evidence were NJT internal documents referring to me as a Train Dispatcher and an e-mail in which a high level Human Resources manager described me and other similar employees as having multiple supervisors. In addition, there were e-mails discovered that demonstrate collusion between the LIRR and Mr. Krason in reference as to what he would testify at the LIRR company trial held on March 24th, 2009. I also informed the board that the discovery process and ongoing depositions might lead to further evidence in support of my positions. I requested a postponement of the case until this additional information was available as well as their assistance in obtaining the information. Finally, there were letters of reference I presented from various individuals for the board.

20. ~~At the hearing Mr. Chair stated that he is not so sure that he would not have done~~
"the same exact thing" in reference to the way I filled out my employment application
bringing into question the seriousness of the charge.

21. On August 29th, 2011 Public Law Board No. 6988 (board) denied my claim in
"Award No. 12" (award). I first received notification and a copy of said award in early
January 2012 from Ms. D.J. Horrell. The length of time to determine the award was over
60 days. Additionally, the length of time taken to deliver the award to the claimant was
excessive, at over 6 months. Award was only delivered after much prodding by myself.

22. The award failed to take into account or even mention all but a small portion of the
evidence and testimony that I submitted. The Boards denial of my claim does not
necessarily agree with itself, see below.

23. On page one under the section "STATEMENT OF CLAIM: PARAGRAPH 1" the board
listed my job title as "Train Dispatcher" in reference to my employment at the Long Island
Railroad. I was never a Long Island Railroad Train Dispatcher. On Page 2 of the board's
decision it notes that during my employment history with the LIRR, I was hired as a Block
Operator and later promoted to Train Director. As such, the board must be referring to my
previous employment as an NJT Train Dispatcher. This contradicts their later assertion at
the end of their decision that I purposely was dishonest on my employment application. It
also brings into question the seriousness of omitting the word "trainee".

24. On page two it states that the carrier would not have hired me had I stated I was a
"Train Dispatcher Trainee" rather than a "Train Dispatcher". The carrier's interest in
hiring me was sparked by a resume and cover letter that made no reference to my
employment at NJT. Rather it focused on my tenure as a Block Operator and Train
Director at Amtrak, the same position for which I was applying at the LIRR. It was not
until the day that I was interviewed for the position that I was asked in person to fill out
the actual employment application as a formality. In fact, this process of filling out the
employment application at the Interview is sanctioned and outlined in LIRR "Corporate
Procedure on General Employment" dated 6/00. In addition, there is no evidence that the
LIRR was specifically looking for individuals with previous experience in the title of Train
Dispatcher. None of the other individuals hired by the LIRR in the year 2007 as "Block
Operators" had the previous title of "Train Dispatcher" in previous employment. In fact,
only one other individual had any Federal Railroad Administration (FRA) governed
railroad experience at all, to a significantly lesser degree than myself.

25. On page three of the award in the excerpt below it states that the claimant's testimony is contradictory in that:

"on page 81 of the transcript, he testified that Mr. C. Scull was his supervisor and on page 86 he stated that Mr. Scull was a member of the same union and then immediately turned around to testify that Mr. Scull was not represented. The record substantiates that Mr. Scull was not the claimant's supervisor nor did he ever hold a supervisor position on N.J. Transit. On page 82 of the transcript, the Claimant was questioned about who was his immediate supervisor at N.J. Transit and he testified as follows:

"Q. Mr. Krason, who testified here earlier, was he your supervisor as well?

A. He was one of my supervisors

Q. Did you report to him?

A. I guess I reported to him..."

Continuing on page 82 of the transcript: the claimant was questioned as follows:

Q. When you were hired at NJ Transit, did anyone tell you who your boss was?

A. No."

Again the Claimant's testimony is contradictory and despite the Organization's able defense it could not overcome those contradictions.." -excerpt from page 3 & 4 of the award.

The board incorrectly called my testimony contradictory. The testimony does not substantiate the board's assertion that Mr. Scull was not the claimant's supervisor. On page 86 of the LIRR trial transcript (transcript) I stated Mr. Scull was my supervisor as I reported to him on a regular basis among other reasons. I additionally stated that Mr. Scull was a union member as to my knowledge he was. I was also asked as to who represented Mr. Scull to which I replied no one, as to my knowledge he was head of the union, therefore no person represented him. The record substantiates in both the transcript and Mr. Scull's later deposition testimony that Mr. Scull was a qualified Assistant Chief Train Dispatcher and he did in fact work as one. The record also

substantiates that Assistant Chief Train Dispatchers supervise various types of employees, including Train Dispatchers. The board had the opportunity and duty during its meeting on June 27th, 2011 to address these issues and failed to bring them up, demonstrating among other things a lack of attention to duty.

26. According to the award the organization could not overcome those contradictions. This suggests that if the perceived contradictions didn't exist then the board would have sustained my claim.

27. According to the award the organization could not overcome those contradictions. This suggests that if the perceived contradictions didn't exist then the board would have sustained my claim.

28. The board also made an error in the award on page 3, paragraph 1. In the following excerpt from the award it states:

"M. Barto, claimant's immediate supervisor while working at the Penn Station Control (PSCC) (*A shared facility with Amtrak, N.J. Transit, and the Carrier*)..."

PSCC is the switch, signal, and operations control center that controls the tracks in and around New York City, which lead into Penn Station. It is owned by Amtrak and under written agreement controlled jointly by the Long Island Railroad and Amtrak with an approximate 50/50 split of duties between employees of both railroads. NJT is not party to the operations sharing agreement. Any NJT employees at PSCC have no authority or official duties in the operation of PSCC, but rather are there as guests to observe the conditions upon which their NJT trains are operating.

29. On page 2 of the award, the board again made an error. In an excerpt from the top of the page, the award states:

"On May 1st, 2009, Claimant was notified that he had been found guilty as charged and was dismissed"

As I previously stated in this complaint, and additionally as I've stated to the board at the hearing of June 21st, 2011 and as my work record reflects; I was away on vacation from the railroad on May 1st, 2009. The railroad dismissed me via mail in a decision dated May 1st, 2009. While I am unsure of when it was actually mailed, I did not receive the decision until days later.

30. During the summer and autumn of 2011 various individuals were summonsed to testify in connection with a lawsuit at NJT. Mr. Scull was one of the individuals asked to testify and he did. A certified transcript of his testimony was sent to the chairman of the board, Mr. Miller, with a request it be considered as it was unavailable at the time of the company trial. The board refused to consider this new and important information that directly contradicted the testimony of Mr. Barto and Mr. Krason.

31. Throughout the entire process the LIRR failed to fully comply with the Railway Labor Act, and did not act in regard to due process.

32. By providing false and misleading statements in his LIRR trial testimony, Mr. Krason violated the terms and spirit of the Railway Labor Act and the Constitution of the United States.

33. The members of Public Law Board 6988 did not conform with standards of arbitration by failing to consider all the evidence placed before it and furthermore by failing to give the case before it serious consideration. Additionally, the board denied this claimant his right to due process.

34. Mr. Farrell through violation of the contract and LIRR established policies and procedures violated the terms and spirit of the Railway Labor Act.

35. Mr. Barto through violation of LIRR established policies and procedures violated the terms and spirit of the Railway Labor Act.

36. Mr. M.J. Chirillo through violation and without regard for LIRR corporate policies and procedures violated the terms and spirit of the Railway Labor Act. Additionally he deprived the claimant the right to due process.

37. Mr. William R. Miller through violation and without regard for due process, evidence, ongoing action and more violated the terms and spirit of the Railway Labor Act. Mr. Miller had the ability and opportunity to consider all evidence presented. Mr. Miller had the ability to postpone his decision and the hearing until additional evidence was available, as the claimant requested. Mr. Miller failed to do so and as such enabled the LIRR to violate its own policies, contracts and procedures to the detriment of the claimant.

38. Ms. D.J. Horrell as a member of Public Law Board No. 6988 and in violation of the terms and spirit of the Railway Labor Act failed to consider the circumstances and evidence presented in denying the claim of the claimant.

39. Throughout this entire process I have maintained my innocence and have worked actively to prove it. The railroad has not acted in good faith in accordance with the Railway Labor Act. The railroad failed to take reasonable action in determining my status at NJT. The LIRR failed to request or obtain in writing anything related to my prior employment at NJT. The railroad relied on faulty, inaccurate and misleading testimony by Mr. Krason violated his oath to provide truthful testimony. Mr. Krason's fraudulent and misleading actions contaminated the entire process from the start.

40. The foregoing claim is subject to be supplemented and/or amended at a later date pursuant to the Federal Rules of Civil Procedure.

IV. Remedy

I respectfully request that I be reinstated as an employee to the Long Island Railroad without prejudice to my previous position, without impact or impairment to seniority and a clean employment record. I respectfully request to be reimbursed for three (3) times the amount of all time, wages, overtime and benefits lost. I respectfully request damages for pain, suffering, lost reputation, and hardship. I respectfully request my railroad retirement and MTA pension be amended to include any time lost as time worked and credited for pension purposes. I further respectfully request consideration and preference over other candidates for transfer to a different operating craft within the railroad, with credit from initial date of LIRR employment for wage and benefit calculations. Finally, I respectfully request a letter of apology from the defendants for their individual roles leading up to the denial of my claim before the board.

January 13, 2012

DATE

Philip E. Dominguez
PHILIP DOMINGUEZ

718-859-1936

TELEPHONE NUMBER

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6988
AWARD NO. 12 (Case No. 12)

LONG ISLAND RAILROAD
LABOR RELATIONS DEPARTMENT

2011 AUG 24 P 12:18

**TRANSPORTATION COMMUNICATIONS
INTERNATIONAL UNION**

VS

LONG ISLAND RAILROAD

William R. Miller, Chairman & Neutral Member
D. J. Horrell, Employee Member
M. D. Chirillo, Carrier Member

Hearing Date: June 21, 2011

STATEMENT OF CLAIM:

- "1) The Carrier violated Rule 52 and others of the Agreement when, on May 1, 2009, it arbitrarily and capriciously dismissed the Claimant, Train Dispatcher Philip Dominguez, from his service for allegedly falsifying his application.
- 2) As a result of the Carrier's unwarranted actions, the Claimant shall be returned to duty with full seniority and reimbursed and made whole for all time, wages and benefits lost."

FINDINGS:

Public Law Board No. 6988, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On January 26, 2009, Claimant was directed to attend a formal Investigation on February 6, 2009, which was mutually postponed until March 24, 2009, to ascertain the facts and determine his responsibility, if any, concerning in pertinent part the following charge:

"Conduct Unbecoming an Employee: Dishonesty/Falsification of Your Employment Application, in that on March 10, 2007, you completed a General Application for Employment with the Long Island Rail Road. Under the section "Employment Information", you indicated that you had previously been employed by N. J. Transit as a Train Dispatcher and listed your supervisor's name and telephone number. A further background check was made prior to your employment with the Carrier, in which the individual you listed as the supervisor was contacted relative to your

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employment with N. J. Transit. That individual provided a positive reference for you, which was relied upon by the Long Island Rail Road in determining if you should be offered employment here. It has been later discovered that the individual you identified as your supervisor was not your supervisor. In addition, it was later discovered that you were not employed as a Train Dispatcher with N. J. Transit, but rather you were a Train Dispatcher Trainee."

On May 1, 2009, Claimant was notified that he had been found guilty as charged and was dismissed.

The facts indicate that Claimant was employed by the Carrier on July 25, 2007, as a Block Operator and at the time of the incident giving rise to the instant charges he was working as a Train Director. This case involves the question of whether or not the Claimant allegedly falsified information on his employment application with the Carrier on March 10, 2007.

It is the Organization's position that the Claimant did not maliciously misrepresent himself when he completed his application for employment with the Carrier. It argued he answered questions on the application to the best of his knowledge and with as much information as he could remember. It asserted that the Claimant had not worked for New Jersey Transit for three years and it is not unreasonable to expect that he might not remember specific telephone numbers and job titles with perfect accuracy. According to it, there were two oversights on his application and they were not an intentional manipulation of the facts. It concluded the Carrier failed to meet its burden of proof that the Claimant purposely set out to defraud the Carrier and because of that it requested that the dismissal be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the Claimant specifically wrote on his employment application that he had been a "Train Dispatcher" rather than a "Train Dispatcher Trainee" which was a misrepresentation of the facts. It argued that was a clear case of falsification of a company document in that Claimant was dishonest when completing the General Application for Employment for the Carrier under the Employment Information section. According to it such dishonest behavior of falsifying employment related documents in any form is intolerable and warrants the imposition of disciplinary action. Moreover, it is important that the Carrier is provided with truthful information as a basis in determining potential employee's hiring during the pre-employment process and background checks. An offer of employment is based upon Carrier's review of all of the requested information provided by a potential candidate and a presumption that it is truthful information. It also asserted that the Claimant testified that he read the documents and understood they were to be filled out in a truthful and accurate manner and if his had been accurate the Carrier would of never hired him. It closed by stating that the dismissal was appropriate as the Claimant was a short term employee who committed a serious breach of Rules and it asked that the discipline not be disturbed and the claim remain denied.

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The Board has thoroughly reviewed the record which indicates that Supervisor, M. Barto, Claimant's immediate Supervisor while working at the Penn Station Central Control (PSCC) (a shared facility with Amtrak, N. J. Transit and the Carrier) was overheard discussing a prior disciplinary matter involving the Claimant by a N. J. Transit colleague who recognized his name. The colleague, J. Vigilante, advised Mr. Barto that the Claimant had previously worked at N. J. Transit and had been terminated. Subsequently, it was discovered that those charges were rescinded and Claimant returned to service. Shortly, afterwards the record indicates he resigned. Nonetheless, because of the initial comments made by the N. J. Transit Supervisor, Mr. Barto requested Claimant's employment application from Carrier's Human Resources Department to review the information provided.

The Board has examined the Claimant's employment application of March 10, 2007, and finds that under prior employment he wrote that he had been a Train Dispatcher at N. J. Transit and listed C. Scull as his immediate Supervisor. Review of the testimony substantiates that Claimant was not a Train Dispatcher for N. J. Transit, but instead was in the Dispatcher Training Program who had not yet become qualified as a Train Dispatcher before resigning from N. J. Transit. The employment application also indicates he listed the name and phone number of C. Scull as his Supervisor who in reality was not a Supervisor, but instead was a Train Dispatcher and local union representative. The Organization vigorously argued in behalf of the Claimant that his actions were not of a deliberate nature with intent to defraud, but instead was a mere oversight and lapse of memory due to the fact that he had not worked for N. J. Transit for approximately three years.

Review of the Claimant's testimony reveals it to be contradictory. For example, on page 81 of the Transcript, he testified that Mr. C. Scull was his Supervisor and on page 86 he stated that Mr. Scull was a member of the same Union and then immediately turned around to testify that Mr. Scull was not represented. The record substantiates that Mr. Scull was not the Claimant's Supervisor nor did he ever hold a Supervisor position on the N. J. Transit. On page 82 of the Transcript, the Claimant was questioned about who was his immediate Supervisor at N. J. Transit and he testified as follows:

"Q Mr. Krason, who testified here earlier, was he your Supervisor as well?

A He was one of my supervisors.

Q Did you report to him?

A I guess I reported to him..."

Continuing on page 82 of the Transcript, the Claimant was questioned as follows:

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"Q When you were hired at NJ Transit, did anyone tell you who your boss was?

A No."

Again the Claimant's testimony is contradictory and despite the Organization's able defense it could not overcome those contradictions. Claimant first testified that he reported to Mr. Krason and in the next breath stated he did not know who his boss was. Claimant's memory is best described as self-serving and evasive whereas the evidence submitted and the testimony of Supervisor Barto and Senior Director of Train Operations, N. J. Transit, R. Krason is direct and credible. It is clear that substantial evidence was adduced at the Investigation that Claimant did not inadvertently err on his employment application form when he misrepresented his prior employment history as having included being a "Train Dispatcher" rather than a "Trainee", thus the Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant was a relatively short time employee with less than two years of service whose disciplinary record included a recent suspension. As previously stated the Claimant provided inaccurate and false information during the hiring process which was a severe offense. Providing false information to an employer at any time in ones career has been determined by many Boards to be a dismissal offense and in this instance we have found no reason for mitigation. Therefore, the Board finds and holds the discipline will not be rescinded because it was not arbitrary, excessive or capricious.

AWARD

Claim denied.


William R. Miller, Chairman & Neutral Member


M. D. Chirillo, Carrier Member


D. J. Horrell, Employee Member

Award Date: 8/29/11

Gantos, Jack (John, Jr.). *Rotten Ralph's rotten Christmas*

Ganz, Yaffa. *The story of Mimmy and Simmy*

Gill, Joan. *Hush, Jon!*

Graham, Margaret Bloy. *Benjy and the barking bird*

Graham, Richard. *Jack and the monster*

Greenfield, Eloise. *She come bringing me that little baby girl*

Gretz, Susanna. *Frog in the middle*

Grimm, Jacob. *Snow White*, ill. by Trina Schart

Hymen

Snow White, ill. by Bernadette Watts

Snow White and the seven dwarves, ill. by Chihiro

Iwasaki

Hathorn, Libby (Elizabeth). *Freya's fantastic surprise*

Havill, Juanita. *Jamaica and Brianna*

Hazen, Barbara Shook. *Why couldn't I be an only kid like you, Wigger?*

Hedderwick, Mairi. *Katie Morag and the tiresome Ted*

Hoban, Russell. *A baby sister for Frances*

A birthday for Frances

Howe, James. *I wish I were a butterfly*

Jenkin-Pearce, Susie. *Bad Boris and the new kitten*

Kellogg, Steven (Stephen). *Best friends*

Kimmel, Eric A. *Rimmonah of the Flashing Sword*

Levine, Abby. *Sometimes I wish I were Mindy*

Lindgren, Astrid. *I want a brother or sister*

Lionni, Leo. *Alexander and the wind-up mouse*

McAllister, Angela. *The battle of Sir Cob and Sir*

Filbert

McLenighan, Valjean. *You can go jump*

McMullan, Kate. *Nutcracker Noel*

Manushkin, Fran. *Little rabbit's baby brother*

Martin, Ann M. *Rachel Parker, kindergarten show-off*

Mayer, Mercer. *One frog too many*

Mayne, William. *Pandora*

Miller, Warren. *The goings on at Little Wishful*

Mills, Claudia. *A visit to Amy-Claire*

Ormondroyd, Edward. *Theodore's rival*

Pett, Bill (William Bartlett). *The luckiest one of all*

Pushkin, Aleksandr-Sergeevich. *The tale of Tsar*

Salian

Roop, Peter. *The buffalo jump*

Schick, Eleanor. *Peggy's new brother*

Shyer, Marlene Fanta. *Stepdog*

Skorpen, Liesel Moak. *His mother's dog*

Stanley, Diane. *Siegfried*

Velthuis, Max. *Little Man to the rescue*

Vigna, Judith. *Couldn't we have a turtle instead?*

Waber, Bernard. *Lyle and the birthday party*

Walt Disney Productions. *Walt Disney's Snow White*

and the seven dwarfs

Watson, Jane Werner. *Sometimes I'm jealous*

Winter, Susan. *A baby just like me*

Zemach, Margot. *To Hilda for helping*

Ziefert, Harriet. *Getting ready for new baby*

Zolotow, Charlotte (Shapiro). *It's not fair*

Maybe a monster

Alexander, Sally Hobart. *Sarah's surprise*

Alexander, Sue. *Witch, Goblin and sometimes Ghost*

Anrooy, Frans van. *The sea horse*

Aseltine, Lorraine. *I'm deaf and it's okay*

Auch, Mary Jane. *Monster brother*

Aylesworth, Jim. *Siren in the night*

Two terrible frights

Babbitt, Natalie. *The something*

Bannon, Laura. *Little people of the night*

The scary thing

Barton, Byron. *Harry is a scaredy-cat*

Benedek, Elissa P. *The secret worry*

Berenstein, Stan. *The Berenstain bears get stage*

fright

The Berenstain bears learn about strangers

Bergström, Gunilla. *Who's scaring Alfie Atkins?*

Berry, Christine. *Mama went walking*

Blegvad, Lenore. *Anna Banana and me*

Bonsall, Crosby Newell. *Who's afraid of the dark?*

Bourgeois, Paulette. *Franklin in the dark*

Bradbury, Ray. *Switch on the night*, ill. by Leo and

Diane Dillion

Switch on the night, ill. by Madeleine Gekiere

Brown, Margaret Wise. *Night and day*

Buck, Nola. *The basement stairs*

Bunting, Eve (Anne Evelyn). *Ghost's hour, spook's*

hour

Terrible things

Byfield, Barbara Nimde. *The haunted churchbell*

Caines, Jeannette. *Chilly stomach*

Callan, Elizabeth Koda. *Good luck pony*

Cameron, Ann. *Harry (the monster)*

Carlson, Nancy L. *Harriet's recital*

Witch lady

Carrick, Carol. *Dark and full of secrets*

Chorao, Kay. *Lester's overnight*

Church, Kristine. *My brother John*

Clifton, Lucille. *Amisika*

Cohen, Miriam. *Jim meets the thing*

The real-skin rubber monster mask

Coles, Alison. *Michael and the sea*

Michael in the dark

Michael's first day

Company González, Mercé. *Killian and the*

dragons

Compton, Kenn. *Granny Greenteeth and the noise*

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Conford, Ellen. *Eugene the brave*

Cooney, Nancy Evans. *Go away monsters, lickety*

split!

Cooper, Helen (Helen F.). *The bear under the*

stairs

Credle, Ellis. *Big afraid, little afraid*

Crowe, Robert L. *Clyde monster*

Cunningham, Julia. *A mouse called Junction*

Devlin, Wende. *Aunt Agatha, there's a lion under*

the couch!

Dickens, Lucy. *Go fish*

Dinardo, Jeffrey. *Timothy and the night noises*

Dodd, Lynley. *Hairy Maclary from Donaldson's*

dairy

Emberley, Ed (Edward Randolph). *Go away, big*

green monster!

Erickson, Karen. *It's dark*

Erlbruch, Wolf. *Leonard*

Farber, Werner. *Night lion*

Freschet, Berniece. *Furlie Cat*

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Akass, Susan. *Number nine duckling*

Alborough, Jez. *It's the bear*

Alexander, Anne (Anna Barbara Cooke). *Noise*

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Alexander, Martha G. *I'll protect you from the jungle*

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 Gay, Zhenya. *Who's afraid?*

Gikow, Louise. *Boober Fraggie's ghosts*
 Girard, Linda Walvoord. *Jeremy's first haircut*
 Glaser, Linda. *Keep your socks on, Albert!*

Goode, Diane. *I hear a noise*
 Goodenow, Earle. *The owl who hated the dark*

Graham, Margaret Bloy. *Benjy and his friend Fifi*
 Grant, Joan. *The monster that grew small*

Greenberg, Barbara. *The bravest babysitter*
 Gregory, Valiska. *Kate's giants*

Gretz, Susanna. *Hide-and-seek*
Too dark!

Grifalconi, Ann. *Darkness and the butterfly*
 Hall, Derek. *Otter swims*

Panda climbs

Tiger runs

Hamilton, Morse. *Who's afraid of the dark?*

Hanlon, Emily. *What if a lion eats me and I fall into*
a hippopotamus' mud hole?

Hanson, Joan. *I won't be afraid*

Harlow, Joan Hiatt. *Shadow bear*

Harrison, Joanna. *Dear bear*

Harshman, Marc. *The storm*

Hawkins, Colin. *Snap! Snap!*

Hazen, Barbara Shook. *Fang*

The knight who was afraid of the dark

Wally the worry-warthog

Heide, Florence Parry. *Timothy Twinge*

Hendry, Diana. *Dog Donovan*

Hesse, Karen. *Lester's dog*

Hest, Amy. *A sort-of sailor*

Hill, Susan. *Go away, bad dreams!*

Himmelman, John. *Lights out!*

Hindley, Judy. *Maybe it's a pirate*

Hines, Anna Grossnickle. *Rumble thumble boom!*

Hoban, Russell. *Goodnight*

Honeycutt, Natalie. *Whistle home*

Hooks, William H. *The mighty Santa Fe*

Howe, James. *There's a monster under my bed*

Huth, Holly Young. *Darkfright*

Impey, Rose. *The ankle grabber*

The flat man

Scare yourself to sleep

Inkpen, Mick. *Penguin small*

Johnston, Tony. *Little Rabbit goes to sleep*

Jonas, Ann. *Holes and peeks*

Jones, Rebecca C. *Down at the bottom of the deep*
dark sea

Joose, Barbara M. *Spiders in the fruit cellar*

Kasza, Keiko. *When the elephant walks*

Keller, Beverly. *Pimm's place*

Kelley, True. *Day-care teddy bear*

Kinsey-Warnock, Natalie. *On a starry night*

Kirk, David. *Miss Spider's tea party*

Kitamura, Satoshi. *Libby takes a walk*

Klunting, Lars. *Regal the golden eagle*

Koller, Jackie French. *No such thing*

Koralek, Jenny. *The boy and the cloth of dreams*

Kraus, Robert. *Noel the coward*

Lakin, Patricia. *Don't touch my room*

Leaf, Munro. *Boo, who used to be scared of the dark*

Lemberg, Stephen H. *Scaredy dog*

Lifton, Betty Jean. *Goodnight orange monster*

Lindgren, Astrid. *The ghost of Skinny Jack*

Little, Jean. *Jess was the brave one*

London, Jonathan. *Froggy learns to swim*

Low, Joseph. *Benny rabbit and the owl*

Boo to a goose

Lyon, George Ella. *Cecil's story*

McBratney, Sam. *The dark at the top of the stairs*

McCully, Emily Arnold. *The evil spell*

Mirette on the high wire

McMullan, Kate. *Good night, Stella*

Martin, C. L. G. *Three brave women*

Martin, Jacqueline Briggs. *Bizzy Bones and Uncle*
Ezra

Grandmother Bryant's pocket

Mathews, Judith. *Nathaniel Willy, scared silly*

Mayer, Mercer. *There's a nightmare in my closet*

There's an alligator under my bed

There's something in my attic

You're the scaredy cat

Milich, Melissa. *Can't scare me!*

Moers, Hermann. *Katie and the big, brave bear*

Mollel, Tololwa M. (Tololwa Marti). *Rhinos for*
lunch and elephants for supper

Moore, Inga. *A big day for Little Jack*

Moore, Lillian. *Little Raccoon and the thing in the*
pool

Morris, Winifred. *What if the shark wears tennis*
shoes?

Moss, Marissa. *After-school monster*

Most, Bernard. *Boo!*

Myers, Christopher A. *Turnip soup*

Myers, Walter Dean. *How Mr. Monkey saw the*
whole world

Namioka, Lensey. *The loyal cat*

Nash, Ogden. *The adventures of Isabel, ill. by*
Walter Lorraine

The adventures of Isabel, ill. by James Marshall

O'Donnell, Peter. *Moonlit journey*

Oppenheim, Shulamith Levey. *The lily cupboard*

Ostheeren, Ingrid. *Martin and the Pumpkin Ghost*

Paleček, Libuse. *Brave as a tiger*

Pfister, Marcus. *Rainbow fish to the rescue!*

Pittman, Helena Clare. *Once when I was scared*

Pizer, Abigail. *Nosey Gilbert*

Polacco, Patricia. *Thunder cake*

Potok, Chaim. *The sky of now*

Powell, Polly. *Just dessert*

Pryor, Bonnie. *The porcupine mouse*

Raschka, Christopher. *Can't sleep*

Ratnett, Michael. *Marmaduke and the scary story*

Reed, Jonathan. *Do armadillos come in houses?*

Reeves, Mona Rabun. *The spooky eerie night noise*

Robison, Deborah. *No elephants allowed*

Roddie, Shen. *Help, Mama, help!*

Rodgers, Frank. *Who's afraid of the ghost train?*

Ross, Pat. *Your first airplane trip*

Ross, Tony. *Happy blanket*
I'm coming to get you!

Sabraw, John. *I wouldn't be scared*

Schertle, Alice. *The gorilla in the hall*

Scruton, Clive. *Scaredy cat*

Seuss, Dr. *The Sneetches, and other stories*

Shortall, Leonard W. *Tony's first dive*

Simms, Laura. *The squeaky door*

Smith, Janice Lee. *The monster in the third dresser*
drawer and other stories about Adam Joshua

Smith, Maggie (Margaret C.). *There's a witch*
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Steel, Danielle. *Max and the baby sitter*

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Stevenson, James. *What's under my bed?*

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 Strand, Mark. *The night book*
 Stubbs, Joanna. *With cat's eyes you'll never be scared of the dark*
 Szilagyi, Mary. *Thunderstorm*
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 Tompert, Ann. *The Tzar's bird*
 Will you come back for me?
 Townson, Hazel. *Terrible Tuesday*
 Trez, Denise. *The royal hiccups*
 Tsutsui, Yoriko. *Anna in charge*
 Udry, Janice May. *Alfred*
 Vigna, Judith. *Nobody wants a nuclear war*
 Viorst, Judith. *My mama says there aren't any zombies, ghosts, vampires, creatures, demons, monsters, fiends, goblins, or things*
 Vogel, Ilse-Margaret. *The don't be scared book*
 Waddell, Martin. *Can't you sleep, Little Bear? Let's go home, Little Bear Owl babies Owl babies, a board book The park in the dark*
 Wallace, Ian. *Chin Chiang and the dragon's dance*
 Walsh, Ellen Stoll. *Pip's magic*
 Watson, Jane Werner. *Sometimes I'm afraid*
 Weston, Martha. *Tuck in the pool*
 Wharton, Thomas. *Hildegard sings*
 Whishaw, Iona. *Henry and the cow problem*
 Widerberg, Siv. *The boy and the dog*
 Williams, Gweneira Maureen. *Timid Timothy, the kitten who learned to be brave*
 Williams, Linda. *The little old lady who was not afraid of anything*
 Willis, Jeanne. *The monster bed The monster storm*
 Winthrop, Elizabeth. *Potbellied possums*
 Wolf, Bernard. *Michael and the dentist*
 Wondriska, William. *The stop*
 Zolotow, Charlotte (Shapiro). *The storm book*
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- Adoff, Arnold. *The return of Rex and Ethel*
 Arnold, Caroline. *What we do when someone dies*
 Baker, Betty. *Rat is dead and ant is sad*
 Barker, Peggy. *What happened when grandma died*
 Bartoli, Jennifer. *Nonna*
 Bernstein, Joanne E. *When people die*
 Brown, Margaret Wise. *The dead bird*
 Burningham, John. *Grandpa*
 Carlstrom, Nancy White. *Blow me a kiss, Miss Lilly*
 Carrick, Carol. *The accident*
 Carson, Jo. *You hold me and I'll hold you*
 Caseley, Judith. *When Grandpa came to stay*
 Clifton, Lucille. *Everett Anderson's goodbye*
 Cohen, Miriam. *Jim's dog Muffins*
 Cohn, Janice I. *I had a friend named Peter Molly's rosebush*
 Cooney, Barbara. *Island boy*
 Coutant, Helen. *First snow*
 Coville, Bruce. *My grandfather's house*
 Dabovich, Lydia. *Mrs. Huggins and her hen Hannah*
 De Paola, Tomie (Thomas Anthony). *Nana upstairs and Nana downstairs*
 Fassler, Joan. *My grandpa died today*
 Fox, Louisa. *Every Monday in the mailbox*
 Gould, Deborah. *Grandpa's slide show*
- Greenlee, Sharon. *When someone dies*
 Harranth, Wolf. *My old grandad*
 Harriott, Ted. *Coming home*
 Hazen, Barbara Shook. *Why did Grandpa die?*
 Hesse, Karen. *Poppo's chair*
 Heymans, Annemie. *The princess in the kitchen garden*
 Hines, Anna Grossnickle. *Remember the butterflies*
 Hoffmann, E. T. A. *The strange child*
 Hogan, Bernice. *My grandmother died but I won't forget her*
 Hoopes, Lyn Littlefield. *Nana*
 Howard, Ellen. *Murphy and Kate*
 Jewell, Nancy. *Time for Uncle Joe*
 Kaldhol, Marit. *Goodbye Rune*
 Kantrowitz, Mildred. *When Violet died*
 Keller, Holly. *Goodbye, Max*
 Lanton, Sandy. *Daddy's chair*
 Leavy, Una. *Good-bye, Papa*
 Le Tord, Bijou. *My Grandma Leonie*
 Limb, Sue. *Come back, Grandma*
 London, Jonathan. *Liplap's wish*
 Lyon, George Ella. *Ada's pal*
 Madenski, Melissa. *Some of the pieces*
 Maguire, Gregory. *Lucas Fishbone*
 Maple, Marilyn J. *On the wings of a butterfly*
 Martin, Jacqueline Briggs. *Grandmother Bryant's pocket*
 Mendoza, George. *The hunter I might have been*
 Morehead, Debby. *A special place for Charlee*
 Newman, Leslea. *Too far away to touch*
 Nodar, Carmen Santiago. *Abuelita's paradise*
 Old, Wendie C. *Stacy had a little sister*
 Oliviero, Jamie. *Som See and the magic elephant*
 Peavy, Linda. *Allison's grandfather*
 Pollack, Eileen. *Whisper whisper Jesse, whisper whisper Josh*
 Porte, Barbara Ann. *Harry's mom*
 Rappaport, Doreen. *The new king*
 Rogers, Fred. *When a pet dies*
 Rosen, Michael J. (1954-). *Bonery and Isabel*
 Rosenberg, Liz. *The carousel*
 Roth, Susan L. *Another Christmas*
 Russo, Marisabina. *Grandpa Abe*
 Sanford, Doris. *David has AIDS*
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 Simmonds, Posy. *Fred*
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 Stein, Sara Bonnett. *About dying*
 Stevens, Margaret (Dean). *When grandpa died*
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 Stolz, Carol Curtis. *Kirsty's kite*
 Thomas, Jane Resh. *Saying good-bye to grandpa*
 Townsend, Maryann. *Pop's secret*
 Van den Berg, Marinus. *The three birds*
 Vigna, Judith. *Saying goodbye to daddy*
 Viorst, Judith. *The tenth good thing about Barney*
 Wahl, Mats. *Grandfather's laika*
 Wallace-Brodeur, Ruth. *Goodbye, Mitch*
 Weitzman, Elizabeth. *Let's talk about when a parent dies*
 Wilhelm, Hans. *I'll always love you*
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 Wright, Betty Ren. *The cat next door*
 Zolotow, Charlotte (Shapiro). *My grandson Lew The old dog*

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 Allen, Frances Charlotte. *Little hippo*
 Andrews, Jan. *The auction*
 Baker, Betty. *Rat is dead and ant is sad*
 Delton, Judy. *I'll never love anything ever again*
 De Veaux, Alexis. *Na-ni*
 Hanson, Regina. *The tangerine tree*
 Havill, Juanita. *Jamaica's blue marker*
 Johnson, Angela. *The aunt in our house*
 Lindgren, Astrid. *My nightingale is singing*
 Low, Joseph. *The Christmas grump*
 McLerran, Alice. *The mountain that loved a bird*
 Paschkis, Julie. *So happy/So sad*
 Sharmat, Marjorie Weinman. *I don't care*
 Singer, Marilyn. *In the palace of the Ocean King*
 Sugita, Yutaka. *Helena the unhappy hippopotamus*
 Wolff, Ashley. *The bells of London*

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Andrews, Jan. *Very last first time*
 Beim, Lorraine. *The little igloo*
 Bernhard, Emery. *How Snowshoe Hare rescued the sun*
 Bushey, Jeanne. *A sled dog for Mashi*
 Carlstrom, Nancy White. *Northern lullaby*
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 Houston, James. *Kiviok's magic journey*
 Jessell, Tim. *Amorak*
 Joosse, Barbara M. *Mama, do you love me?*
 Kroll, Virginia L. *The seasons and someone*
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 Luenn, Nancy. *Nessa's fish*

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Machetanz, Sara. *A puppy named Gia*
 Magdanz, James S. *Go home, river*
 Morrow, Suzanne Stark. *Inatuck's friend*
 Munsch, Robert N. *A promise is a promise*
 Parish, Peggy. *Ootah's lucky day*
 San Souci, Robert D. *Song of Sedna*
 Scott, Ann Herbert. *On mother's lap*
 Steiner, Barbara (Annette). *The whale brother*
 Villoldo, Alberto. *Skeleton woman*

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Ethnic groups in the U.S.

Appelt, Kathi. *Bayou lullaby*
 Bailey, Debbie. *Grandma*
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 Banish, Roslyn. *A forever family*
 Barrett, Joyce Durham. *Willie's not the hugging kind*
 Belpré, Pura. *Santiago*
 Bettinger, Craig. *Follow me, everybody*
 Blue, Rose. *I am here*
 Brenner, Barbara A. *Faces, faces, faces*
 Bunting, Eve (Anne Evelyn). *Smoky night*
 Caseley, Judith. *Apple pie and onions*
 Clifford, Eth. *Your face is a picture*
 Cohen, Miriam. *Will I have a friend?*
 Crume, Marion W. *Listen!*
 Cummings, Pat. *Petey Moroni's Camp Runamok diary*
 Davol, Marguerite W. *Black, white, just right*
 Dickens, Lucy. *Dancing class*
 Dooley, Norah. *Everybody bakes bread*
Everybody cooks rice
 Dorros, Arthur. *Abuela*
 Feldman, Eve B. *Animals don't wear pajamas*
 Fisher, Iris L. *Katie-Bo*
 Greene, Roberta. *Two and me makes three*
 Heinst, Marie. *My first number book*
 Hoffman, Phyllis. *Meatball*
 Hogan, Paula Z. *The hospital scares me*
 Hughes, Shirley. *The big concrete lorry*
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 Jenkins, Jessica. *Thinking about colors*
 Johnson, Angela. *The aunt in our house*
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 Keats, Ezra Jack. *My dog is lost!*
 Kesselman, Wendy Ann. *Angelita*
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 Kroll, Virginia L. *New friends, true friends, stuck-like-glue friends*
 Kuklin, Susan. *How my family lives in America*
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 MacKinnon, Debbie. *My first ABC*
 Maestro, Betsy. *Coming to America*
 May, Julian. *Why people are different colors*
 Medearis, Angela Shelf. *The zebra-riding cowboy*
 Merriam, Eve. *Boys and girls, girls and boys*